

**INTERGOVERNMENTAL AGREEMENT FOR SHARING OF COSTS OF THE  
CARBON VALLEY TRANSIT SYSTEM FEASIBILITY STUDY**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Dacono, Colorado, a municipal corporation, the Town of Frederick, Colorado, a municipal corporation, and the Town of Firestone, Colorado, a municipal corporation (collectively "the Parties").

**WHEREAS**, the Parties are authorized by § 29-1-203, C.R.S. as amended, to enter into contracts or agreements for the sharing of costs; and

**WHEREAS**, C.R.S. § 29-1-201, et seq., authorizes and encourages local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with one another to provide any function, service, or facility lawfully authorized to each; and

**WHEREAS**, in accordance with § 29-1-203, C.R.S. as amended, each of the Parties is authorized to enter into this IGA; and

**WHEREAS**, the Parties agree that there is a need to conduct a transit feasibility study in the area including the Town of Firestone, Town of Frederick, and the City of Dacono to examine the specific transit needs of the communities and to present options to meet such needs; and

**WHEREAS**, the Town of Firestone, Town of Frederick, and City of Dacono have applied for and received or will receive a federal Section 5304 grant ("grant") that will be administered by the Town of Firestone in the amount of \$25,000.00 to perform the *Carbon Valley Transit System Feasibility Study* ("Study"); and

**WHEREAS**, the requirements of the grant are that there be provided \$6,250.00 in matching funds ("matching funds") as a condition of receiving the grant, and additional expenses related to the administration of the Section 5304 grant, which cost the Parties desire to split equally among the Parties.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the City of Dacono, the Town of Frederick and the Town of Firestone agree as follows:

1. Incorporation of Recitals. The Parties confirm and incorporate the foregoing recitals into this Agreement.

2. Purpose. The purpose of this Agreement is to identify the allocation of the cost of the matching funds between the Parties and to establish the process by which such payment and cost sharing will be accomplished and to set forth the agreement by the parties as to the role of the Town of Firestone as the executor of the grant.

3. Funding. The Parties agree to share equally the cost of the matching funds and the grant administrative costs, and agree to each contribute an amount not to exceed \$3,000.00 in matching funds and administrative costs for the completion of the Study. Within 10 business days of the Parties executing this Agreement, the City of Dacono and the Town of Frederick shall each deposit the Town of Firestone matching funds in the amount of \$2,083.33. Additional costs in excess of this amount shall be invoiced by Firestone to Dacono and Frederick and will be due 30 days from the date of the invoice. Any unused funds collected by Firestone shall be returned to Dacono and Frederick within 30 days of the completion of the project.

4. Responsibilities of the Town of Firestone. The Town of Firestone will oversee the execution of the Study, and shall be solely responsible for all contracting, supervisory and administrative matters related to execution of the grant and completion of the Study. Firestone will provide updates of the progress of the study upon request, will advise the other Parties of the timeline and consultant engaged to complete the study, and will provide the other Parties with a copy of the final Study. The Town of Firestone will apply the matching funds to the cost of the Study as costs are incurred or as per grant requirement.

5. Cooperation. The Parties agree to cooperate with one another in accomplishing the terms, conditions, and provisions of this Agreement, and will execute such additional documents as necessary to effectuate the same. Furthermore, Dacono and Frederick understand that Section 5304 grant is a federally funded program and that all applicable federal requirements, as identified in the "State of Colorado 5304 Agreement with the Town of Firestone", attached hereto as Exhibit A, shall be followed.

6. No Third Party Rights; Non-Compliance. This Agreement is made solely for the benefit of the parties hereto, and is not intended to, nor shall it be deemed to, confer rights to any other persons or entities not named as parties hereto.

7. Effective Date; Term. The effective date of this Agreement shall be the last date on which a Board of Trustees or City Council has approved the Agreement, as set forth below. This Agreement shall remain in effect through the conclusion of the completion of the Study.

8. Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by U.S. mail, postage prepaid addressed as follows:

**TOWN OF FREDERICK:**

Town of Frederick  
Attn: Town Administrator  
P.O. Box 435  
Frederick, CO 80530

**CITY OF DACONO:**

City of Dacono  
Attn: City Administrator  
P.O. Box 186  
Dacono, CO 80514

**TOWN OF FIRESTONE:**

Town of Firestone  
Attn: Town Manager  
P.O. Box 100  
Firestone, CO 80520

Notice hand-delivered is deemed received upon receipt. Mailed notice is deemed received three (3) days following mailing.

9. Complete Agreement. This instrument embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. No waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections contained herein.

10. Severability. If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement.

11. Choice of Law. In all litigation arising out of this Agreement, the Parties agree the laws of the state of Colorado shall control, and venue shall be in the District Court of Weld County, Colorado.

12. Governmental Immunity Act. Nothing in this Agreement shall be construed as a waiver by either Party of any rights, immunities, privileges, monetary limitations, or defenses available to the Parties by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

**TOWN OF FREDERICK**

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

**CITY OF DACONO**

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**TOWN OF FIRESTONE**

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

EXHIBIT A  
State of Colorado 5304 Agreement  
With the Town of Firestone

**STATE OF COLORADO**  
**5304 AGREEMENT**  
**with**  
**TOWN OF FIRESTONE**

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## 1. PARTIES

THIS Agreement is entered into by and between the Colorado Department of Transportation (hereinafter called "CDOT" or the "State"), and the Town of Firestone (hereinafter called "TOWN OF FIRESTONE", "Grantee", or "Local Agency"), a public entity within the STATE OF COLORADO.

## 2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. CDOT shall not be liable to pay or reimburse TOWN OF FIRESTONE for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

## 3. RECITALS

### A. Authority, Appropriation, And Approval

Authority to enter into this Agreement exists in C.R.S. 43-1-701, 43-1-702, and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies:

G/L Account: 4518000010	Company Code: 1000	CO Area: 1000
WBS Element: CO-80-DB17.FIRE	Fund: 400	Functional Area: Not Relevant
Fund Center: D9711-411		Vendor Code: 2000201
Catalog Federal Domestic Assistance Number (CFDA) 20.515		FFY: 2007
Contract Amount Total: \$31,250	Total Federal Amount (80%): \$25,000	Local Match Total (20%): \$6,250

### B. Consideration

The Grantee has proposed a project in the form of an application for funding under Section 5304 of the Act, hereinafter referred to as the "Project"; and the Governor of the State of Colorado, in accordance with a request by the Federal Transit Administration, hereinafter referred to as "FTA," has designated the State to manage the Section 5304 program, including the responsibility to evaluate and select public transportation projects proposed by State agencies, local public bodies and agencies thereof (including Indian Tribes), and nonprofit operators of public transportation services in areas other than urbanized.

### C. Purpose

The purpose of this Contract is to state the terms, conditions, and mutual understandings of the Parties as to the manner in which the Project will be undertaken and completed. Section 5304 of 49 U.S.C. §§ 5301 et seq., as amended, hereinafter referred to as the "Act", institutes a program offering federal assistance for public transportation for statewide transportation planning by way of a formula grant program administered by the State. The terms and conditions of the Project and the Act are incorporated herein by reference to the extent consistent herewith.

### D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

## 4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

### A. Agreement or Contract

"Agreement" or "Contract" means this Agreement its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references incorporated pursuant to Colorado State Fiscal Rules and Policies.

### B. Budget

"Budget" means the budget for the Work described in Exhibit A.

### C. Evaluation

"Evaluation" means the process of examining TOWN OF FIRESTONE's Work and rating based on criteria established in this Agreement.

#### **D. Exhibits and other Attachments**

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Option Letter), **Exhibit C** (Guidance for Audit; if used), **Exhibit D** (Security Agreement; if used), **Exhibit E** (Procurement Authorization; if used), **Exhibit F** (Notice of Acceptance/Non-Acceptance; if used).

#### **E. Goods**

"Goods" means tangible material acquired, produced, or delivered by TOWN OF FIRESTONE either separately or in conjunction with the Services TOWN OF FIRESTONE renders hereunder.

#### **F. Notice: to FTA or the State**

Notice for FTA shall be provided to the Region VIII office c/o the Community Planner or authorized personnel at: 12300 W. Dakota Ave., Suite 300, Lakewood CO 80228.

Notice for the State shall be provided to the CDOT Transit Manager at: 4201 E. Arkansas Ave.-Shumate Building, Denver, CO 80222.

#### **G. Party and Parties**

"Party" means CDOT or TOWN OF FIRESTONE and "Parties" means both CDOT and TOWN OF FIRESTONE.

#### **H. Project Period**

Means the period for which the Work listed in **Exhibit A** is performed, which is from the Effective Date through the duration of the Agreement.

#### **I. Services**

"Services" means the required services to be performed by TOWN OF FIRESTONE pursuant to this Agreement.

#### **J. Subcontractor or Subgrantee**

"Subcontractor" or "Subgrantee" means third-parties, if any, engaged by TOWN OF FIRESTONE to aid in performance of its obligations.

#### **K. Work**

"Work" means the tasks and activities TOWN OF FIRESTONE is required to perform to fulfill its obligations under this Agreement and **Exhibit A**, including the performance of the Services and delivery of the Goods.

#### **L. Work Product**

"Work Product" means the tangible or intangible results of TOWN OF FIRESTONE's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or Work Product of any type, including drafts.

### **5. FEDERAL FUNDING**

This Contract is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof. The Parties hereto expressly recognize that the Grantee is to be paid, reimbursed, or otherwise compensated with funds provide to the State by the United States Department of Transportation, Federal Transit Administration under the National Capital Transportation Act of 1969, as amended, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21<sup>st</sup> Century, as amended, or other Federal laws that FTA administers, and therefore, the Grantee expressly understands and agrees that all it right, demands, and claims to compensation arising under this contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate this contract without liability, including liability for termination costs.

### **6. PROJECT IMPLEMENTATION**

- a. General. The Grantee agrees to carry out the Project as follows:

- (1) Project Description. Because the "Project Description" in the Scope of Work (**Exhibit A**) section of the Contract provides a brief description of the Project or Projects to be funded, the Grantee agrees to perform the work as described in the "Project Description" in the Scope of Work



(**Exhibit A**) and in its Application that is incorporated by reference in the approved Contract for the Project.

- (2) Effective Date. The effective date of the Contract, Option Letter (**Exhibit B**), or amendments thereto is the date on which the State Controller or designee executes this Contract for Federal assistance as shown on the Contract, Option Letter (**Exhibit B**), or amendments thereto. The Grantee agrees to undertake Project work promptly after receiving notice that the State has executed the contract for Federal assistance for the Project.
- (3) Grantee's Capacity. The Grantee agrees to maintain sufficient legal, financial, technical, and managerial capacity to: (a) plan, manage, and complete the Project and provide for the use of Project property; (b) carry out the safety and security aspects of the Project and (c) comply with the terms of its Contract providing Federal assistance for the Project, the Approved Project Budget, the Project schedules, the Grantee's annual Certifications and Assurances to the State, and applicable Federal, State and/or Local laws, regulations, and directives, except to the extent that FTA or the State determines otherwise in writing.
- (4) Completion Dates. The Grantee agrees to complete the Project in a timely manner. Nevertheless, the time period to be covered by this Contract shall begin on January 1, 2010, or the date the State Controller, or designee, executes this contract, whichever is later, shall be undertaken and performed in the sequence and manner set forth herein, and shall end December 31, 2011. The State may require continued performance for a period not to exceed one year for any Services at the rates and terms specified in the Contract. The State may exercise the option by written notice to the Grantee within 30 days prior to the end of the current Contract term in accordance with Section 36 of this Contract. If the State exercises this option, the extended Contract will be considered to include this option provision. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed three years.

b. U.S. DOT Administrative Requirements. The Grantee agrees to comply with the Federal administrative requirements that apply to the category in which it belongs:

- (1) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18, apply to a Grantee that is a State, local, or Indian tribal government.
- (2) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19, apply to a Grantee that is an institution of higher education or a nonprofit organization.
- (3) Except to the extent that FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19, apply to a Grantee that is a private for-profit organization.

c. Application of Federal, State, and Local Laws, Regulations, and Directives.

- (1) Federal Laws, Regulations, and Directives. The Grantee agrees that Federal laws and regulations control Project award and implementation. The Grantee also agrees that Federal directives as defined in this Contract, provide Federal guidance applicable to the Project, except to the extent that FTA or the State determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Grantee understands and agrees that unless it requests FTA or State written approval, the Grantee may incur a violation of Federal laws or regulations, or the terms of its Contract if it implements an alternative procedure or course of action not approved by FTA or the State.

The Grantee understands and agrees that Federal and State laws, regulations, and directives applicable to the Project and to the Grantee on the date on which the State Controller or designee

executes Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Grantee executes the Contract for the Project, and might apply to that Contract. The Grantee agrees that the most recent of such Federal laws, regulations, and directives will govern the administration of the Project at any particular time, except to the extent that FTA or the State determines otherwise in writing.

FTA's and the State's written determination may take the form of a Special Condition, Special Requirement, Special Provision (Federal and/or State), or Condition of Award within the Contract for the Project, a change to an FTA directive, or a letter to the Grantee signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or otherwise conditions a specific provision of the Contract for the Project. To accommodate changing Federal requirements, the Grantee agrees to include in each agreement with each Subgrantee and each third party contract implementing the Project notice that Federal laws, regulations, and directives may change and that the changed requirements will apply to the Project, except to the extent that FTA or the State determines otherwise in writing. All standards or limits in the Contract for the Project are minimum requirements, unless modified by FTA or the State.

- (2) State, Territorial, and Local Law. Should a Federal law preempt a State, territorial, or local law, regulation, or ordinance, the Grantee must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Contract for the Project requires the Grantee to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Contract for the Project violates or would require the Grantee to violate any State, territorial, or local law, regulation, or ordinance, the Grantee agrees to notify FTA or the State immediately in writing. Should this occur, FTA, the State and the Grantee agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

d. Grantee's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Grantee agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws and regulations, the Grant Agreement or Cooperative Agreement for the Project, and this Master Agreement, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

- (1) Significant Participation by a Subgrantee. Although the Grantee may delegate any or almost all Project responsibilities to one or more Subgrantees, the Grantee agrees that it, rather than any Subgrantee, is ultimately responsible for compliance with all applicable Federal laws, and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.
- (2) Significant Participation by a Lessee of a Grantee. Although the Grantee may lease Project property and delegate some or many Project responsibilities to one or more lessees, the Grantee agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.
- (3) Significant Participation by a Third Party Contractor. Although the Grantee may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Grantee (such as in a turnkey contract), the Grantee agrees that it, rather than the third party contractor, is ultimately responsible to FTA for compliance with all applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(4) Exceptions. The Grantee, however, is relieved of the requirement to comply with Federal requirements in the following two circumstances:

(a) When the Designated Grantee of Urbanized Area Formula Program assistance as defined at 49 U.S.C. § 5307(a)(2) has entered into a Supplemental Agreement with FTA and a Grant Grantee or Grantee covering the Project, the Designated Grantee is not responsible for compliance with Federal requirements in connection with the Project, or

(b) When the Federal Government, through appropriate official action, relieves the Grantee of a portion of or all responsibility to the Federal Government

e. Grantee's Responsibility to Extend Federal Requirements to Other Entities.

(1) Entities Affected. Only entities that are signatories to this Contract for the Project are Parties to this Contract. To achieve compliance with certain Federal laws, regulations, or directives, however, other entities participating in the Project through their involvement with the Grantee (such as Subgrantees and third party grantees) will necessarily be affected. Accordingly, the Grantee agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal laws, regulations, and directives affecting Project implementation, except to the extent FTA or the State determines otherwise in writing. In addition, if any entity other than the Grantee is expected to fulfill responsibilities typically performed by the Grantee, the Grantee agrees to assure that the entity carries out the Grantee's responsibilities as set forth in the Contract.

(2) Documents Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which those provisions affect an entity (such as a Subgrantee, lessee, or other) participating in the Project through the Grantee. Thus, the Grantee agrees to use a written document to ensure that each entity participating in the Project complies with applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

(a) Third Party Contracts. Because Project activities performed by a third party grantee must comply with all applicable Federal laws, regulations, and directives, except to the extent FTA determines otherwise in writing, the Grantee agrees to include appropriate clauses in each third party contract stating the third party grantee's responsibilities under Federal laws, regulations, and directives, including any provisions directing the third party grantee to extend applicable requirements to its Subgrantees at the lowest tier necessary. When the third party contract requires the third party grantee to undertake responsibilities for the Project usually performed by the Grantee, the Grantee agrees to include in that third party contract those requirements applicable to the Grantee imposed by the Contract for the Project and extend those requirements throughout each tier except as FTA determines otherwise in writing. Additional guidance pertaining to third party contracting is contained in the FTA's "Best Practices Procurement Manual." FTA cautions, however, that its "Best Practices Procurement Manual" focuses mainly on third party procurement processes and may omit certain other Federal requirements applicable to the work to be performed.

(b) Subcontracts. Because Project activities performed by a Subgrantee must comply with all applicable Federal laws, regulations, and directives except to the extent that the State determines otherwise in writing, the Grantee agrees as follows:

(1) Written Subcontract. The Grantee agrees to enter into a written agreement with each Subgrantee (subcontract) stating the terms and conditions of assistance by which the Project will be undertaken and completed.

(2) Compliance with Federal Requirements. The Grantee agrees to implement the Project in a manner that will not compromise the Grantee's compliance with Federal laws, regulations, and directives applicable to the Project and the Grantee's obligations under this Contract

for the Project. Therefore, the Grantee agrees to include in each subcontract appropriate clauses directing the Subgrantee to comply with those requirements applicable to the Grantee imposed by the Contract for the Project and extend those requirements as necessary to any lower level subcontract or any third party grantee at each tier, except as FTA or the State determines otherwise in writing.

- e. No Federal Government Obligations to Third Parties. In connection with performance of the Project, the Grantee agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any Subgrantee, lessee, third party grantee, or other person or entity that is not a party to this Contract for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subcontract, lease, or third party contract at any tier, the Federal Government has no obligations or liabilities to entity, other than the Grantee, lessee, or third party grantee at any tier.
- f. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Grantee agrees to notify FTA and the State immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Grantee's ability to perform the Project in accordance with the terms of this Contract for the Project. The Grantee also agrees to notify the State and FTA immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations; and agrees to inform FTA, also in writing, before naming the Federal Government as a party to litigation for any reason, in any forum. At a minimum, the Grantee agrees to send each notice to FTA required by this subsection to the FTA Regional Counsel within whose Region the grantee operates its public transportation system or implements the Project.

## 7. ETHICS

- a. Code of Ethics. The Grantee agrees to maintain a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of subagreements, leases, or third party contracts supported with Federal assistance. The Grantee agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential Subgrantee, lessee, or third party grantee at any tier or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award. The Grantee may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Grantee agrees that its code or standards shall also prohibit the its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Grantee agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party grantees or Subgrantees or their agents.
- (1) Personal Conflicts of Interest. The Grantee agrees that its code or standards of conduct shall prohibit the Grantee's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or subcontract supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.
- (2) Organizational Conflicts of Interest. The Grantee agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed

under a proposed third party contract or subcontract may, without some restrictions on future activities, result in an unfair competitive advantage to the third party grantee or Subgrantee or impair its objectivity in performing the contract work.

- b. Debarment and Suspension. The Grantee agrees to comply, and assures the compliance of each Subgrantee, lessee, or third party grantee at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Grantee agrees to, and assures that its Subgrantees, lessees, and third party grantees will review the "Excluded Parties Listing System" at <http://epls.arnet.gov/> before entering into any third party contract or subagreement.
- c. Bonus or Commission. The Grantee affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.
- d. Lobbying Restrictions. The Grantee agrees that:
  - (1) In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Contract;
  - (2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and
  - (3) It will comply, and will assure the compliance of each Subgrantee, lessee, or third party contractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- e. Employee Political Activity. To the extent applicable, the Grantee agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.
- f. False or Fraudulent Statements or Claims. The Grantee acknowledges and agrees that:
  - (1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to Grantee's activities in connection with the Project. By executing the Contract for the Project, the Grantee certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Grantee also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Grantee the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
  - (2) Criminal Fraud. If the Grantee makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Grantee the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

- g. Trafficking in Persons. To the extent applicable, the Grantee agrees to comply with, and assures the compliance of each Subgrantee with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of this Subsection 3.g of this Master Agreement consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175:

(1) Definitions. For purposes of this Subsection 3.g, the Grantee agrees that:

(a) Employee means either:

1. An individual who is employed by the Grantee or a Subgrantee, and who is participating in the Grant Agreement or Cooperative Agreement for the Project; or
2. Another person who is participating in the Grant Agreement or Cooperative Agreement for the Project and who is not compensated by the Grantee including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements of the Grant Agreement or Cooperative Agreement and this Master Agreement.

(b) Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(c) Private entity:

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.
2. Includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(e) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(2) Provisions Applicable to Each Grantee. The Grantee agrees:

(a) To inform FTA immediately of any information it receives from any source alleging a violation of a prohibition in Subsection 3.g(3)(a) of this Master Agreement below.

(b) That FTA may unilaterally terminate its Federal assistance for the Grant Agreement or Cooperative Agreement for the Project as provided in Subsection 3.g(3)(b) or (4) of this Master Agreement. FTA's right to terminate unilaterally:

1. Implements subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and
2. Is in addition to all other remedies for noncompliance that are available to the Federal Government under this Master Agreement.

(c) To include the requirements of Subsection 3.g(3)(a) of this Master Agreement in any subagreement it enters into with a private entity, as defined in Subsection 3.g(1)(c) of this Master Agreement.

(3) Provisions Applicable to a Grantee that is a Private Entity. A Grantee that is a private entity as defined in Subsection 3.g(1)(c) of this Master Agreement agrees that:

- (a) It, its employees, its Subgrantees and its Subgrantees' employees that participate in the Grant Agreement or Cooperative Agreement for the Project, may not--
  - 1. Engage in severe forms of trafficking in persons during the period of time that the Grant Agreement or Cooperative Agreement for the Project is in effect;
  - 2. Procure a commercial sex act during the period of time that the Grant Agreement or Cooperative Agreement for the Project is in effect; or
  - 3. Use forced labor in the performance of the Grant Agreement or Cooperative Agreement or subagreements for the Project.
- (b) FTA may unilaterally terminate the Grant Agreement or Cooperative Agreement for the Project, without penalty to the Federal Government, if the Grantee or a Subgrantee that is a private entity--
  - 1. Is determined to have violated a prohibition in Subsection 3.g(3)(a) of this Master Agreement, or
  - 2. Has an employee who is determined by an FTA official authorized to terminate the Grant Agreement or Cooperative Agreement for the Project to have violated a prohibition in Subsection 3.g(3)(a) of this Master Agreement through conduct that is either--
    - a. Associated with his or her participation in the Grant Agreement or Cooperative Agreement for the Project; or
    - b. Imputed to the Grantee or the Subgrantee using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200.

(4) Provision Applicable to a Grantee Other Than a Private Entity. FTA may unilaterally terminate the Grant Agreement or Cooperative Agreement for the Project, without penalty to the Federal Government, if a Subgrantee that is a private entity--

- (a) Is determined to have violated an applicable prohibition in Subsection 3.g(3)(a) of this Master Agreement; or
- (b) Has an employee who is determined by an FTA official authorized to terminate the Grant Agreement or Cooperative Agreement for the Project to have violated an applicable prohibition in Subsection 3.g(3)(a) of this Master Agreement through conduct that is either--
  - 1. Associated with his or her participation in the Grant Agreement or Cooperative Agreement for the Project, or
  - 2. Imputed to the subgrantee using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200.

## **8. FEDERAL ASSISTANCE**

The Grantee agrees that the State will provide FTA Federal assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or regulations, (b) the "Maximum FTA Amount Approved," set forth in this Contract for the Project, or (c) the amount calculated in accordance with the "Maximum Percentage(s) of FTA Participation," as may be modified by the Conditions of Award or other Special Conditions, Special Requirements, or Special

Provisions (Federal and/or State) of the Contract for the Project. The State's responsibility to make Federal assistance payments is limited to the amounts listed in the Approved Project Budget for the Project. The "Estimated Total Eligible Cost" in the Contract for the Project is the amount that forms the basis on which the State determines the "Maximum FTA Amount Awarded."

- a. "Net Project Cost". For any Project required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Grantee for that portion of the Project that cannot reasonably be financed from the Grantee's revenues, *i.e.*, "Net Project Cost" of the Project. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Contract is the "Estimated Net Project Cost" and is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.
- b. Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Grantee for all or part of the total Project cost that is eligible for Federal assistance. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Contract for the Project is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

## **9. LOCAL SHARE**

A Grantee that is required to provide a local share for the Project agrees as follows:

- a. Restrictions on the Source of the Local Share. The Grantee agrees to provide sufficient funds or approved in-kind resources, together with the Federal assistance awarded, that will assure payment of the actual cost of each Project activity covered by the Contract for the Project. The Grantee agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the public transportation system in which such facilities or equipment are used, or other Federal funds, except as permitted by Federal law or regulation.
- b. Duty to Obtain the Local Share. The Grantee agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs, except to the extent that the State or FTA determines otherwise in writing.
- c. Prompt Payment of the Local Share. The Grantee agrees to provide the proportionate amount of the local share promptly as Project costs are incurred or become due, except to the extent that the Federal Government determines otherwise in writing.
- d. Reduction of the Local Share. The Grantee agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal assistance provided is made to the Federal Government.

## **10. APPROVED PROJECT BUDGET**

Except to the extent that the State determines otherwise in writing, the Grantee agrees as follows: The Grantee will prepare a Project Budget which, upon approval by the State is designated the "Approved Project Budget." The Grantee will incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget, which will be incorporated by reference and made part the underlying Contract for the Project. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the underlying Contract, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal assistance awarded for the Project may be made consistent with applicable Federal laws, regulations and directives. An award of additional Federal assistance will require a new Approved Project Budget. If the Grantee estimates that it will have unobligated funds remaining after the end of the performance period of the Project, the Grantee agrees to report this to the State at the earliest possible time and ask for disposition instructions.



## 11. ACCOUNTING RECORDS

In compliance with applicable Federal laws, regulations, and directives, and except to the extent that the State or FTA determines otherwise in writing, the Grantee agrees as follows:

- a. Project Accounts. The Grantee agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Grantee also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or part to the Project so that they may be clearly identified, readily accessible, and available to the State upon request and, to the extent feasible, kept separate from documents not related to the Project.
- b. Funds Received or Made Available for the Project. The Grantee agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and to record in the Project Account all amounts provided by the Federal Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in compliance with Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that the State or FTA determines otherwise in writing. Use of financial institutions owned at least fifty (50) percent by minority group members is encouraged.
- c. Documentation of Project Costs and Program Income. The Grantee agrees to support all costs charged to the Project, including any approved services or property contributed by the Grantee or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee also agrees to maintain accurate records of all program income derived from Project implementation, except certain income the State or FTA determines to be exempt from the Federal program income requirements.

## 12. REPORTING, RECORD RETENTION, AND ACCESS

The Grantee shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the operation of programs or the delivery of services under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. All such records, documents, communications and other materials shall be the property of the State, and shall be maintained by the Grantee in a central location and the Grantee shall be custodian on behalf of the State.

- a. Types of Reports. The Grantee agrees to submit to the State all reports required by Federal laws and regulations, and directives, the Contract for the Project, and any other reports FTA may specify, except to the extent that the State determines otherwise in writing.
- b. Report Formats. The Grantee agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to the State must be prepared and submitted in electronic and or typewritten hard copy formats as the State may specify. The State reserves the right to require records to be submitted in other formats.
- c. Record Retention. During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Grantee agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require.
- d. Access to Records of Grantees and Subgrantees. The Grantee agrees to permit, and require its Subgrantees to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project

work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its Subgrantees pertaining to the Project, as required by 49 U.S.C. § 5325(g).

- e. Project Closeout. The Grantee agrees that Project closeout does not alter the reporting and record retention requirements of this Section 12 of the Contract.

### 13. PAYMENTS

The Grantee agrees that it will not seek payment from the State for Project costs until it has executed the Contract for the Project.

- a. Grantee's Request for Payment. Except to the extent that the State determines otherwise in writing, to obtain a payment for Project expenses from the State, the Grantee agrees to:

- (1) Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Except to the extent that the Federal Government determines in writing that the Grantee may defer its local share for the Project, a Grantee required under the terms of federal law, regulation, or Contract to provide a local share for the Project agrees that it will not:
  - (a) Request or obtain Federal funds exceeding the amount justified by the local share provided, and
  - (b) Take any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized by the Contract for the Project,
- (2) Submit to the State all financial and progress reports required to date by the Contract for the Project, and
- (3) Identify the source(s) of Federal assistance provided for the Project from which the payment is to be derived.

- b. Payment by the State

Costs Reimbursed. The Grantee agrees that Project costs eligible for Federal participation must comply with all the following requirements. Except to the extent that the State or FTA determines otherwise in writing, to be eligible for reimbursement, Project costs must be:

- (1) Consistent with the Project Description, the Approved Project Budget, and other provisions of the Contract for the Project,
- (2) Necessary in order to accomplish the Project,
- (3) Reasonable for the goods or services purchased,
- (4) Actual net costs to the Grantee (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred, excluding program income),
- (5) Incurred for work performed after the Effective Date of the Contract for the Project, except to the extent that the Federal Government determines otherwise in writing,
- (6) Satisfactorily documented,
- (7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Grantee, and with accounting principles and procedures approved by the Grantee for its third party grantees and Subgrantees,
- (8) Eligible for Federal participation under Federal law, regulations, or directives, and
- (9) In compliance with U.S. DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22(b) or 49 C.F.R. § 19.27, which regulations specify the applicability of U.S. Office of Management and Budget (U.S. OMB) circulars and Federal Acquisition Regulation (FAR) provisions as follows:
  - (a) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, applies to Project costs incurred by a Grantee that is a State, local, or Indian tribal government.

- (b) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, applies to Project costs incurred by a Grantee that is an institution of higher education.
  - (c) U.S. OMB Guidance for Grants and Agreements "Cost Principles for Non-profit Organizations (OMB Circular A-122)," 2 C.F.R. Part 230, applies to Project costs incurred by a Grantee that is a private nonprofit organization.
  - (d) FAR, at 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" applies to Project costs incurred by a Grantee that is a for-profit organization.
- c. Excluded Costs. The Grantee understands and agrees that, except to the extent FTA or the State determines otherwise in writing, ineligible costs will be treated as follows:
- (1) In determining the amount of Federal assistance the State will provide for the Project, the State will exclude:
    - (a) Any Project cost incurred by the Grantee before the Effective Date of the Contract, Option Letter (**Exhibit B**), or amendment, unless otherwise permitted by Federal or State law, regulation, or directive, or unless an authorized State official states in writing to the contrary;
    - (b) Any cost that is not included in the latest Approved Project Budget;
    - (c) Any cost for Project property or services received in connection with a subcontract, lease, third party contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by the State;
    - (d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h); and
    - (e) Any cost ineligible for FTA participation as provided by applicable Federal laws, regulations, or directives, except to the extent the Federal Government determines otherwise in writing.
  - (2) The Grantee understands and agrees that payment to the Grantee for any Project cost does not constitute the State's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Grantee of the terms of the Contract for the Project. The Grantee acknowledges that the State will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the State determines that the Grantee is not entitled to receive any portion of the Federal assistance requested or provided, the State will notify the Grantee in writing, stating its reasons. The Grantee agrees that Project closeout will not alter the Grantee's responsibility to return any funds due to the State as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the State's right to disallow costs and recover Federal assistance provided for the project on the basis of a later audit or other review. Unless prohibited by Federal or State law or regulation, the State may recover any Federal financial assistance made available for the Project as necessary to satisfy any outstanding monetary claims that the State may have against the Grantee.
- d. Claims, Excess Payments, Disallowed Costs, including Interest.
- (1) Grantee's Responsibility to Pay. Upon notification to the Grantee that specific amounts are owed to the State, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Grantee agrees to remit to the State promptly the amounts owed, including applicable interest, penalties and administrative charges.
  - (2) Amount of Interest. The Grantee agrees that whether the amount due the State is treated as a claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Grantee agrees to remit interest to the State in accordance with the following:
    - (a) Claims against the Grantee. For claims pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Grantee agrees that the amount of interest owed to the State will be

determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9 (i), whichever is applicable.

- (b) Excess Payments or Disallowed Costs. For excess payments or disallowed cost payments made by the Federal Government to the Recipient for which claims procedures have not been initiated under the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.* and implementing regulations, the Recipient agrees that common law interest owed to the Federal Government will be determined in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i), or otherwise as FTA may determine.

- e. De-obligation of Funds. The Grantee agrees that the State may de-obligate unexpended Federal funds before Project closeout.

#### **14. PROJECT COMPLETION, AUDIT, SETTLEMENT, AND CLOSEOUT**

- a. Project Completion. Within ninety (90) calendar days following Project completion date or termination by the State, the Grantee agrees to submit a final certification of Project expenses, and third party audit reports, as applicable.
- b. Audit of Grantees. Except to the extent the State determines otherwise in writing, the Grantee acknowledges and agrees as follows:
  - (1) Audit Requirements. The Grantee agrees to have financial and compliance audits performed as required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* As provided by 49 C.F.R. § 19.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The Grantee also agrees to obtain any other audits required by the State. Such audits shall test compliance with the items specified in Guidance for Audit of Grantee Compliance with FTA Requirements (**Exhibit C; if used**) and shall be completed by the Grantee if it is a State or local government, Indian Tribal government or private nonprofit organization. The Grantee agrees that these audits will be conducted in accordance with U.S. Government Accountability Office, (U.S. GAO) "Government Auditing Standards." The Grantee agrees that Project closeout will not alter the Grantee's audit responsibilities.
  - (2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by OMB Circular A-87, OMB Circular A-21, OMB Circular A-122, or the FAR at 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.
- c. Funds Owed to the State. The Grantee agrees to remit to the State any excess payments made to the Grantee, any costs disallowed by the State, and any amounts recovered by the Grantee from third parties or from other sources, as well as any penalties and any interest required by Subsection 13.d(2) of this Contract.
- d. Project Closeout. Project closeout occurs when the State notifies the Grantee that the State has closed the Project, and either forwards the final Federal assistance payment or acknowledges that the Grantee has remitted the proper refund. The Grantee agrees that Project closeout by the State does not invalidate any continuing requirements imposed by the Contract for the Project, or any unmet requirements set forth in the Federal Government's final notification or acknowledgment.

## 15. RIGHT OF THE STATE TO TERMINATE

### a. **Breach**

#### (1) Defined:

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

#### (2) Notice and Cure Period:

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §15(c). If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15(b). Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

### b. **Remedies**

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §15(a)(2). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

#### (1) **Termination for Cause and/Breach**

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

##### i. **Obligations and Rights**

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Grants with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or sub-Grants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

##### ii. **Payments**

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

##### iii. **Damages and Withholding**

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee

and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**(2) Early Termination in the Public Interest**

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15 or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify Grantee of such termination in accordance with §15. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

**ii. Obligations and Rights**

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(b)(i).

**iii. Payments**

If this Grant is terminated by the State pursuant to this §15, Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

**(3) Remedies Not Involving Termination**

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to Grantee until corrections in until corrections in Grantee's performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

**iv. Removal**

Demand removal of any of Grantee's employees, agents, or Sub-grantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

**v. Intellectual Property**

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

**c. Notices and Representatives**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**(1) State:**

John Valerio
Colorado Department of Transportation
4201 E. Arkansas Ave.
Shumate Building
Denver, CO 80222
John.Valerio@dot.state.co.us

**(2) Grantee:**

Wesley LaVanchy-town Manager
Town of Firestone
P.O. Box 100
Firestone, CO 80529
wlavanchy@ci.firestone.co.us

**16. CIVIL RIGHTS**

The Grantee agrees to comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- a. **Nondiscrimination in Federal Public Transportation Programs.** The Grantee agrees to comply, and assures the compliance of each third party grantee at any tier and each Subgrantee at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b. **Nondiscrimination – Title VI of the Civil Rights Act.** The Grantee agrees to comply, and assures the compliance of each third party grantee at any tier and each Subgrantee or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Grantee also agrees to comply with any applicable implementing Federal directives that may be issued.
- c. **Equal Employment Opportunity.** The Grantee agrees to comply, and assures the compliance of each third party grantee at any tier of the Project and each Subgrantee at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Grantee also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

- (1) General: The Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Grantee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
  - (2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, or third party contractor, or other participant, at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws, and regulations, and in accordance with applicable Federal directives affecting construction undertaken as part of the Project.
- d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Grantee agrees to facilitate participation by Disadvantaged Business Enterprises (DBE) in the Project and assures that each third party grantee at any tier of the Project and each Subgrantee at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:
- (1) The Grantee agrees and assures that it will comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
  - (2) The Grantee agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party contract, or subcontract supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Grantee agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subcontracts supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Grantee's DBE program, if any, is incorporated by reference and made part of the Contract for the Project. The Grantee agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Contract for the Project. Upon notification by U.S. DOT to the Grantee of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.
- e. Nondiscrimination on the Basis of Sex. The Grantee agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.
- f. Nondiscrimination on the Basis of Age. The Grantee agrees to comply with all applicable requirements of:
- (1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90 which prohibit discrimination against individuals on the basis of age.
  - (2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.



- g. Access for Individuals with Disabilities. The Grantee agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Grantee also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Grantee agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:
- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
  - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
  - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
  - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
  - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
  - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
  - (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
  - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
  - (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
  - (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
  - (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.
- h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Grantee agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq.*, and any amendments thereto.
- i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Grantee agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipient's (Grantee's) to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005.

- j. Environmental Justice. The Grantee agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
- k. Other Nondiscrimination Laws. The Grantee agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

## **17. PREFERENCE FOR UNITED STATES PRODUCTS AND SERVICES**

To the extent applicable, the Grantee agrees to comply with the following U.S. domestic preference requirements:

Buy America. The Grantee agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any later amendments thereto.

## **18. PROCUREMENT**

To the extent applicable, the Grantee agrees to comply with the following third party procurement provisions:

- a. Federal Standards. The Grantee agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other procurement requirements of Federal laws in effect now or as amended to the extent applicable; with U.S. DOT third party procurement regulations of 49 C.F.R. § 18.36 or at 49 C.F.R. §§ 19.40 through 19.48 and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Grantee also agrees to follow the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revisions thereto, except to the extent FTA determines otherwise in writing. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Grantee understands and agrees that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed.
- b. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Grantee agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.
- c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Grantee agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not using any Federal assistance awarded by FTA to support a procurement using exclusionary or discriminatory specifications.
- d. Geographic Restrictions. The Grantee agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by FTA. For example, in procuring architectural, engineering, or related services, the grantee's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.
- e. In-State Bus Dealer Restrictions. In accordance with 49 U.S.C. § 5325(i), the Grantee agrees that any State law requiring buses to be purchased through in-State dealers will not apply to acquisitions of vehicles financed with Federal assistance authorized under 49 U.S.C. chapter 53.
- f. Neutrality in Labor Relations. To the extent permitted by law, the Grantee agrees to follow Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Grantees' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order No. 13208, 41 U.S.C. § 251 note, which among other things provides that the Grantee may neither impose requirements for nor prohibit affiliations with a labor organization (such as project labor agreements) as a condition for award of any third party contract or subcontract for construction or construction management services, except to the extent that the Federal Government determines otherwise in writing.

- g. Federal Supply Schedules. State, local, or nonprofit Grantees may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, FTA, or other Federal laws or regulations in accordance with applicable Federal directives or determinations.
- h. Force Account. The Grantee agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.
- i. FTA Technical Review. The Grantee agrees to permit FTA to review and approve the Grantee's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.
- j. Project Approval/Third Party Contract Approval. Except to the extent the State determines otherwise in writing, the Grantee agrees that the State's award of Federal assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.
- k. Preference for Recycled Products. To the extent applicable, the Grantee agrees to comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the Grantee agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.
- l. Clean Air and Clean Water. The Grantee agrees to include in each third party contract or each subcontract exceeding \$100,000 adequate provisions to ensure that each Project participant will agree to
  - (1) Report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities,"
  - (2) Refrain from using any violating facilities,
  - (3) Report violations to FTA and the Regional U.S. EPA Office, and
  - (4) Comply with the inspection and other applicable requirements of:
    - (a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and
    - (b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.
- m. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Grantee agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.
- n. Rolling Stock. In acquiring rolling stock, the Grantee agrees as follows:
  - (1) Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Grantee agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
  - (2) Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), a Grantee procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multi-year contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.
  - (3) Pre-Award and Post-Delivery Requirements. The Grantee agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and, when promulgated, any amendments to those regulations. The

Grantee agrees to verify and complete the Post Delivery Certification Form once verification of Buy America (if applicable), Purchaser's Requirements, and Federal Motor Vehicle Safety Standards (FMVSS) have been provided by vendor. In addition, the Grantee agrees to submit Procurement Authorization (**Exhibit E-if used**) prior to procuring capital equipment and to complete Notice of Acceptance/Non-Acceptance (**Exhibit F-if used**) after delivery of capital equipment.

- (4) Bus Testing. To the extent applicable, the Grantee agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.
- o. Bonding. Except to the extent that FTA determines otherwise in writing, the Grantee agrees to comply with the following bonding provisions, as applicable:
  - (1) Construction Activities. The Grantee agrees to provide bid guarantee, Contract performance, and payment bonds to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives except to the extent that FTA determines otherwise in writing.
  - (2) Other Activities. The Grantee agrees to follow FTA guidance on bonding restrictions for projects not involving construction, except to the extent that FTA determines otherwise in writing.
- p. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Grantee may award a third party contract to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53, and any implementing Federal regulations or directives that FTA may issue, except to the extent FTA determines otherwise in writing.
- q. Award to Responsible Grantees. In compliance with 49 U.S.C. § 5325(j), the Grantee agrees to award third party contracts only to those grantees possessing the ability to successfully perform under the terms of the proposed procurement, and before awarding a third party contract, the Grantee agrees to consider:
  - (1) The the third party grantee's integrity,
  - (2) The third party grantee's compliance with public policy,
  - (3) The third party grantee's past performance, including the performance reported in Grantee Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), if any, and
  - (4) The third party grantee's financial and technical resources.
- r. Access to Third Party Contract Records. The Grantee agrees to require its third party grantees and third party subgrantees, at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records to the extent required by 49 U.S.C. § 5325(g). The Grantee further agrees to require its third party grantees and third party subgrantees, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.
- s. Electronic and Information Technology. When using Federal assistance to procure reports or information for distribution to the State, among others, the Grantee agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that the reports or information, when provided to the State, will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.
- t. Procurement Using State Price Agreement. The State may establish price agreements with vendors for the purchase of certain vehicle types. If the Grantee is procuring a vehicle for which the State has executed a price agreement, as set forth in **Exhibit A**, the Grantee agrees it will procure the vehicle from the vendor with whom the State has executed the appropriate price agreement, unless otherwise exempted by the State

in writing to the Grantee. When such price agreements are used, the State shall be responsible for ensuring compliance with provisions A through S above.

## 19. LEASES

- a. Capital Leases. To the extent applicable, the Grantee agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.
- b. Leases Involving Certificates of Participation. The Grantee agrees to obtain FTA concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

## 20. PATENT RIGHTS

- a. General. If any invention, improvement, or discovery of the Grantee or of any Subgrantee, any third party grantee or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Grantee agrees to notify FTA or the State immediately and provide a detailed report in a format satisfactory to FTA.
- b. Federal Rights. The Grantee agrees that its rights and responsibilities, and those of each Subgrantee and each third party grantee at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Grantee agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that third party contract, third party subcontract, or subcontract as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 *et seq.*), irrespective of the status of the Grantee, Subgrantee, or third party grantee in the project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, *etc.*).

## 21. RIGHTS IN DATA AND COPYRIGHTS

- a. Definition. The term "subject data," as used in this Section 21 of this Contract means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.
- b. General. The following restrictions apply to all subject data first produced in the performance of the Contract for the Project:
  - (1) Except for its own internal use, the Grantee may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Grantee authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.
  - (2) The restrictions on publication of Subsection 21.b(1) of this Contract, however, do not apply to a Contract with an institution of higher learning.
- c. Federal Rights in Data and Copyrights. The Grantee agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 21.c of this

Contract. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

- (1) Any subject data developed under the Contract for the Project, subcontract or third party contract supported with Federal assistance derived from the Contract for the Project, whether or not a copyright has been obtained; and
  - (2) Any rights of copyright to which a Grantee, Subgrantee, or a third party grantee at any tier of the Project purchases ownership with Federal assistance.
- d. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Grantee agrees to indemnify, save, and hold harmless the Federal and State Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Grantee of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Grantee shall not be required to indemnify the Federal or State Government for any such liability caused by the wrongful acts of Federal or State employees or agents.
- e. Restrictions on Access to Patent Rights. Nothing in Section 21 of this Contract pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- f. Data Developed Without Federal Funding or Support. In connection with the Project, the Grantee may find it necessary to provide data to FTA/the State developed without any Federal funding or support by the Federal Government. The requirements of Subsections 21.b, 21.c, and 21.d of this Contract do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Grantee understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."
- g. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or subsequent Federal laws or regulations, the Grantee understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law providing access to such records).

## **22. USE OF REAL PROPERTY, EQUIPMENT, AND SUPPLIES**

The Grantee understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest in that Project property. With respect to any Project property financed with Federal assistance under the Contract, the Grantee agrees to comply with the following provisions of this Contract except to the extent FTA determines otherwise in writing:

- a. Use of Project Property. The Grantee agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA. The Grantee agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Grantee unreasonably delay or fail to use Project property during the useful life of that property, the Grantee agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Grantee further agrees to notify FTA or the State immediately when any Project property is withdrawn from Project use or when any Project property is used

in a manner substantially different from the representations the Grantee has made in its Application or in the Project Description for the Contract for the Project.

- b. General. A Grantee that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and directives. A Grantee that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Grantee that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Grantee also agrees to comply with FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 22.g of this Contract.
- c. Maintenance. The Grantee agrees to maintain Project property in good operating order, in compliance with any applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.
- d. Records. The Grantee agrees to keep satisfactory records pertaining to the use of Project property, and submit to the State upon request such information as may be required to assure compliance with this Section 22 of this Contract.
- e. Incidental Use. The Grantee agrees that:
  - (1) General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws or regulations, in accordance with applicable Federal directives.
  - (2) Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if the:
    - (a) The incidental use does not interfere with the Grantee's Project or public transportation operations;
    - (b) The Grantee fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;
    - (c) The Grantee uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and
    - (d) Private entities pay all applicable excise taxes on fuel.
- f. Encumbrance of Project Property. Unless FTA approves otherwise in writing, the Grantee agrees to maintain satisfactory continuing control of Project property as follows:
  - (1) Written Transactions. Absent the express consent of the Federal Government, the Grantee agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subcontract, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.
  - (2) Oral Transactions. Absent the express consent of the Federal Government, the Grantee agrees that it will not obligate itself to any third party with respect to Project property in any manner that would adversely affect the continuing Federal interest in any Project property.
  - (3) Other Actions. The Grantee agrees that it will not take any action that would either adversely affect the Federal interest or adversely impair the Grantee's continuing control of the use of Project property.
- g. Transfer of Project Property. The Grantee understands and agrees as follows:
  - (1) Grantee Request. The Grantee may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local government authority to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the

Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).

- (2) Federal Government Direction. The Grantee agrees that the Federal Government may direct the disposition of, and even require the Grantee to transfer, title to any Project property financed with Federal assistance awarded under the Contract.
- (3) Leasing Project Property to Another Party. Unless FTA has determined or determines otherwise in writing, if the Grantee leases any Project property to another party, the Grantee agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Grantee and lessee, or another similar document. Upon request by FTA, the Grantee agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior FTA approval, the Grantee may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Grantee also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property. The Grantee shall comply with the provisions of the Security Agreement set forth in **Exhibit D; if used.**

- (1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Grantee agrees to comply with FTA's disposition requirements.
- (2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Grantee agrees as follows:

- (a) Notification Requirement. The Grantee agrees to have the State notify FTA on behalf of the Grantee immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

- (b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Grantee agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property. The Grantee agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by FTA, the Grantee agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.

2. Real Property. The Grantee agrees that the fair market value of real property financed under the Project shall be determined by FTA either on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24, by straight line depreciation of improvements to real property coupled with the value of the land as determined by FTA on the basis of appraisal, or other Federal law or regulations that may be applicable.

3. Exceptional Circumstances. The Grantee agrees that the Federal Government may require the use of another method to determine the fair market value of Project property. In unusual



circumstances, the Grantee may request that another reasonable method including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Grantee pertaining to the preservation of Project property no longer used for appropriate purposes.

- (c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Grantee agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Grantee may fulfill its obligations to remit the Federal interest by either:
  - 1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the property that has been prematurely withdrawn from use; or
  - 2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.
- i. Insurance Proceeds. If the Grantee receives insurance proceeds as a result of damage or destruction to the Project property, the Grantee agrees to:
  - (1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or
  - (2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.
- j. Transportation - Hazardous Materials. The Grantee agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.
- k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Grantee's knowledge and consent, the Grantee agrees to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.
- l. Responsibilities After Project Closeout. The Grantee agrees that Project closeout will not change the Grantee's Project property management responsibilities as stated in Section 22 of this Contract, and as may be set forth in Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

## **23. INSURANCE**

In addition to other insurance requirements that may apply, the Grantee agrees as follows:

- a. Minimum Requirements. At a minimum, the Grantee agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.
  - 1. The Grantee shall obtain, and maintain at all times during the term of this Contract, and to require Subgrantees to carry, insurance in the following kinds and amounts:
    - a) Standard Worker's Compensation and Employer Liability as required by State statute, including occupational disease, covering all employee on or off the work site, acting within the course of their employment.
    - b) General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverage:
      - i) Combined single limit of \$1,000,000 if written on an occurrence basis.
      - ii) Any aggregate limit will not be less than \$1,000,000.

- iii) Combined single limit of \$1,000,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends two years beyond the performance period of the agreement.
- iv) If any aggregate limits are reduced below \$1,000,000 because of the claims made or paid during the required policy period, the Grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.

- 2. The State of Colorado shall be named as additional insured on all liability policies.
- 3. The insurance shall include provisions preventing cancellation without 60 days prior notice to the State by certified mail.
- 4. The Grantee shall provide certificates showing adequate insurance coverage to the State within seven working days of award or contract execution, unless otherwise provided.
- 5. If the Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq. ("Act"), the Grantee shall at all times during the term of this agreement maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the Grantee shall show proof of such insurance.
- 6. Proof of insurance is also required where appropriate the Grantee agrees to comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. Section 4012(a), with respect to any Project activity involving construction or acquisition.

## 24. REAL PROPERTY

For real property acquired with Federal assistance, the Grantee agrees as follows:

- a. Land Acquisition. The Grantee agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in the cost of that real property.
- b. Covenant Assuring Nondiscrimination. The Grantee agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.
- c. Recording Title to Real Property. To the extent required by FTA, the Grantee agrees to record the Federal interest in title to real property used in connection with the Project.
- d. FTA Approval of Changes in Real Property Ownership. The Grantee agrees that it will not dispose of, modify the use of, or change the terms of the real property title or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

## 25. EMPLOYEE PROTECTIONS

- a. Construction Activities. The Grantee agrees to comply, and assures the compliance of each third party grantee and each Subgrantee at any tier of the Project, with the following laws and regulations providing protections for construction employees:
  - (1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act, 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;
  - (2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing

U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

- (3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874, and implementing U.S. DOL regulations, "Grantees and Subgrantees on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

- b. Activities Not Involving Construction. The Grantee agrees to comply, and assures the compliance of each third party grantee and each Subgrantee at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
- c. Activities Involving Commerce. The Grantee agrees that the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, applies to employees performing Project work involving commerce.
- d. Public Transportation Employee Protective Arrangements. If the Contract for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Grantee agrees to comply with the applicable requirements for its Project as follows:
- (1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Grantee agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Contract for the Project. The Grantee agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Contract for the Project. The requirements of this Subsection 21.d(1) of this Contract do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separator Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are contained in Subsections 24.d(2) and), (3), respectively, of this Contract. [Amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 *Fed. Reg.* 47046 *et seq.*, August 13, 2008.].
- (2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority Subgrantee participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Grantee agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments

thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Grantee agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

- (3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Grantee agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient's project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. [New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 *Fed. Reg.* 47046 *et seq.*, August 13, 2008.]

## 26. ENVIRONMENTAL PROTECTIONS

The Grantee recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Grantee also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Grantee agrees to comply, and assures the compliance of each Subgrantee and each third party grantee, with any applicable Federal laws, regulations and directives in effect now or become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA, the State and the Grantee. The Grantee understands and agrees that those laws and regulations, and directives may not constitute the Grantee's entire obligation to meet all Federal environmental and resource conservation requirements.

- a. National Environmental Policy. Federal assistance is contingent upon the Grantee's facilitating FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and Federal environmental protection regulations that may be promulgated at a later date. The Grantee agrees to comply with 23 U.S.C. §§ 139 and 326 as applicable, and implement those requirements in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 *Fed. Reg.* 66576 *et seq.*, November 15, 2006, and any subsequent applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.
- b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Grantee agrees to comply with all applicable Federal laws and regulations in accordance with applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:
- (1) The Grantee agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint

FHWA/FTA Authorities," dated September 2, 2005, and in accordance with any applicable Federal directives that may be issued at a later date; to comply with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Grantee agrees to implement each air quality mitigation or control measure incorporated in the Project. The Grantee further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

- (2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Grantee agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.
  - (3) The Grantee agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.
- c. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Grantee agrees to comply with all applicable Federal laws and regulations accordance with applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:
- (1) The Grantee agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.
  - (2) The Grantee agrees to comply with the notice of violating facility provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.
- d. Wild and Scenic Rivers. The Grantee agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, with U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.
- e. Endangered Species and Fisheries Conservation. The Grantee agrees to comply with protections for endangered species the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*
- f. Historic Preservation.
- (1) The Grantee agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.
  - (2) The Grantee agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:

- (a) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Grantee agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties.
  - (b) The Grantee agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.
- g. Indian Sacred Sites. The Grantee agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

## **27. ENERGY CONSERVATION**

The Grantee agrees to comply with any mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.* except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Grantee agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

## **28. CHARTER SERVICE OPERATIONS**

The Grantee agrees that neither it nor any public transportation operator performing Work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Contract for the Project. The Grantee understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

## **29. SCHOOL TRANSPORTATION OPERATIONS**

The Grantee agrees that neither it nor any public transportation operator performing Work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Contract for the Project. The Grantee understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount FTA considers appropriate.

## **30. METRIC SYSTEM**

To the extent U.S. DOT or FTA directs, the Grantee agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and

Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and U.S. DOT or FTA regulations and directives. As practicable and feasible, the Grantee agrees to accept products and services with dimensions expressed in the metric system of measurement.

### **31. SUBSTANCE ABUSE**

To the extent applicable, the Grantee agrees to comply with the following Federal regulations:

- a. Drug-Free Workplace. U.S. DOT regulations, "Government wide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*
- b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

### **32. FEDERAL "\$1 COIN" REQUIREMENTS**

To the extent required by the Federal Government, the Grantee agrees to comply with the provisions of Section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), in that the Grantee's property requiring the use of coins or currency will be fully capable of accepting and dispensing \$1 coins in connection with that use. The Grantee also agrees to display signs and notices denoting the capability of its equipment and facilities on the premises where coins or currency are accepted or dispensed, including on each vending machine.

### **33. SEAT BELT USE**

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the Grantee is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any third party contracts, third party subcontracts, or subcontracts involving the Project.

### **34. PROTECTION OF SENSITIVE SECURITY INFORMATION**

To the extent applicable, the Grantee agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

### **35. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION**

The Grantee agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. Notification to FTA. The Grantee agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Grantee seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Grantee agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the grantee operates its public transportation system or implements the Project.
- b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party

recovery, except that the Grantee may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

- c. Enforcement. The Grantee agrees to pursue all legal rights provided within any third party contract.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Grantee.
- e. Alternative Dispute Resolution. FTA encourages the Grantee to use alternative dispute resolution procedures, as may be appropriate.

### **36. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to TOWN OF FIRESTONE under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §37 applies.

TOWN OF FIRESTONE agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

TOWN OF FIRESTONE performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of TOWN OF FIRESTONE performance shall be part of the normal contract administration process and TOWN OF FIRESTONE performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of TOWN OF FIRESTONE obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of TOWN OF FIRESTONE obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. TOWN OF FIRESTONE shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that TOWN OF FIRESTONE demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the TOWN OF FIRESTONE, and showing of good cause, may debar TOWN OF FIRESTONE and prohibit TOWN OF FIRESTONE from bidding on future contracts. TOWN OF FIRESTONE may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of TOWN OF FIRESTONE, by the Executive Director, upon showing of good cause.

### **37. OPTION LETTER TO EXTEND PROVISIONS**

#### **i. Option to Extend**

CDOT may require continued performance for a period not to exceed one year at the same rates and same terms specified in the Agreement. If CDOT exercises this option, it shall provide written notice to TOWN OF FIRESTONE at least 30 days prior to the end of the current Agreement term in a form substantially equivalent to **Exhibit B**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Agreement. The total duration of this Agreement, including the exercise of any options under this clause, shall not exceed three years.



**ii. Option to Increase or Decrease Quantities and Total Price**

CDOT may increase or decrease the quantity of Goods/Services described in section/schedule/exhibit based upon the rates established in the Contract. If CDOT exercises the option, it will provide written notice to Grantee as least 30 days prior to the end of the current Contract term in a form substantially equivalent to **Exhibit B**. Delivery/performance of the Goods/Service shall continue at the same rates and terms. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original Contract.

**iii. Options for Phased Performance**

The State may require the Grantee to begin performance on the next contact phase as outlined in the Statement of Work in **Exhibit A** and at the same terms and same conditions stated in the contract. If the State exercises this option, it will provide written notice to the Grantee at least 30 days prior to the end of the current phase in a form substantially equivalent to Exhibit B. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original contract.

**iv. CDOT Two Month Extension**

CDOT, at its sole discretion upon written notice to TOWN OF FIRESTONE as provided in §15, may unilaterally extend the term of this Agreement for a period not to exceed two months if the Parties are negotiating a replacement Agreement (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Agreement in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The two month extension shall immediately terminate when and if a replacement Agreement is approved and signed by the Colorado State Controller.

**38. GENERAL PROVISIONS**

**A. Assignment and Subgrants**

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, subgranting without such consent shall be void. All assignments, subgrants, or Subgrantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting arrangements and performance.

**B. Binding Effect**

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

**C. Captions**

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

**D. Counterparts**

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**E. Entire Understanding**

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

**F. Indemnification-General**

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

### **G. Jurisdiction and Venue**

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

### **H. Modification**

#### **vi. By the Parties**

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by both parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF GRANTS - TOOLS AND FORMS.

#### **vii. By Operation of Law**

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

### **I. Order of Precedence**

The provisions of this Grant shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Federal Laws and regulations,
- ii. Colorado Special Provisions,
- iii. The provisions of main body of this Agreement,
- iv. **Exhibit A** (Scope of Work),
- v. **Exhibit B** (Option Letter)
- vi. Other exhibits in descending order of their attachment.

### **J. Severability**

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

### **K. Survival of Certain Grant Terms**

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

### **L. Taxes**

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

### **M. Third Party Beneficiaries**

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

### **N. Waiver**

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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### **39. SPECIAL PROVISIONS**

The Special Provisions apply to all Agreements except where noted in italics.

#### **1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

#### **2. FUND AVAILABILITY. CRS §24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

#### **3. GOVERNMENTAL IMMUNITY.**

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

#### **4. INDEPENDENT CONTRACTOR**

The Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. The Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for the Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to the Grantee and its employees and agents only if such coverage is made available by the Grantee or a third party. The Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Grantee shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

#### **5. COMPLIANCE WITH LAW.**

The Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

#### **6. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

#### **7. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

#### **8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Grantee hereby certifies and warrants that, during the term of this Agreement and any extensions, The Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

**10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

[*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.**

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] The Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c). The Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to the Grantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the Subcontractor and the contracting State agency within three days if the Grantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If the Grantee participates in the State program, the Grantee shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that the Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If the Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, the Grantee shall be liable for damages.

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

The Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

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40. SIGNATURE PAGE

CMS: 10-HTD-15486/SAP PO #: 291000846

**THE PARTIES HERETO HAVE EXECUTED THIS INTERAGENCY AGREEMENT**

**\* Persons signing for the Grantee hereby swear and affirm that they are authorized to act on the Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<p><b>THE GRANTEE</b> <b>TOWN OF FIRESTONE</b></p> <p>By: _____ Name of Authorized Individual</p> <p>Title: _____ Official Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO</b> <b>Bill Ritter, Jr. GOVERNOR</b> Colorado Department of Transportation Russell George, Executive Director</p> <p>By: _____</p> <p>Date: _____</p>
<p>2nd Grantee Signature if Needed</p> <p>By: _____ Name of Authorized Individual</p> <p>Title: _____ Official Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Grantee is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Grantee for such performance or for any goods and/or services provided hereunder.**

<p><b>STATE CONTROLLER</b> <b>David J. McDermott, CPA</b></p> <p>By: _____</p> <p>Controller-Colorado Department of Transportation</p> <p>Date: _____</p>
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## **EXHIBIT A-SCOPE OF WORK AND CONDITIONS**

### **Carbon Valley Transit Service Feasibility Study Town of Firestone 5304 Contract Scope of Work April, 2010**

#### **Background:**

The City of Dacono, Town of Firestone and Town of Frederick, along with the unincorporated Weld County area of Evanston, make up the area known as the Carbon Valley. Dacono, Firestone and Frederick representatives have met several times over the past two years to discuss options for transit service in this area. The communities agree conceptually on the need for transit and want to further explore the feasibility of transit service in the Carbon Valley.

The feasibility study will help the respective governing bodies select the appropriate direction to take to plan for and implement transit services in the Carbon Valley area. The options to be studied will include a locally funded and operated system along with possible arrangements with the Denver Regional Transportation District (RTD) or other transit options in the region. The results of this study would also be useful to RTD, the Denver Regional Council of Governments (DRCOG), Weld County, the Upper Front Range Transportation Planning Committee, and CDOT as they work on transportation plans for the region.

#### **Purpose and nature of the project:**

The overall purpose of the study is to evaluate the transit expansion needs in the Carbon Valley. This will consist of identifying general public and human services transit needs, addressing the governance, funding, and operational needs, regulatory issues in creating a new transit system, and to implement (if deemed feasible) a transit service incorporating the needs of a multitude of partners including public officials of the three partner cities, local citizens, economic develop groups, and pertinent human service organizations.

This *Carbon Valley Transit Service Feasibility Study* will be overseen and managed by the Town of Firestone. The Town will hire a consultant to determine transit service needs in the study area and connecting to the larger region. The study will identify key stakeholders and community members in planning for transit service expansion and also include verifying the need, and establish community support for transit services.

#### **Scope of Work:**

The project is a comprehensive study of the feasibility and application of transit programs in the area. An in depth analysis is required to provide proper direction to the respective Boards and staff of the participating city and towns. An inventory of existing and planned transit programs in the region will be compiled. A review of completed and ongoing studies of transit options for this region will be completed and summarized. The selected consultant will conduct a scientifically valid survey that will determine the need for human services transportation and local and regional public transit services in the area.

The project will be overseen by a committee of representatives from all participating communities. The Town of Frederick, City of Dacono, and the Town of Firestone will each provide representation to this committee.

This study will be used to determine if and when transit services should be implemented in the Carbon Valley area. The results of the study will provide insight into potential demand, best methods of providing service, cost of service, and possible forms of organizational structure in establishing a transit program. The staff of all participating communities will use the information to guide decisions and to establish a program that benefits all participating communities. The results of the study would be made available to the public through hard copies

of documents at each Town and City Hall and online through town websites. The survey results and final report will also be shared with CDOT, DRCOG, Weld County and RTD staff.

This project will be carried out by a consultant under the supervision of the Town of Firestone. The results of the survey will be made available to interested parties through the City.

The chosen consultant will complete the following tasks:

**Task 1: Working Group:** The cities will work with the partner agencies and interested individuals to establish a Working Group to provide input and oversee this study effort. This Working Group will include existing transit service providers within the region, human service providers, government entities, and other selected persons committed to local and regional transit services improvement in the region.

**Task 2: Surveys and Public Outreach:** A kick-off meeting will be held between the Working Group, the Cities, and the consultant to identify project goals, determine a project schedule, and to discuss the public and government input process for the study. The Working Group will further approve the release of a travel demand survey and a government entity survey that will look at agency needs and the willingness to participate in the planning, funding, and implementation of the identified service. The consultant will identify and implement a process for issuing surveys and attaining public outreach information. This outreach effort will gather input from transit providers, van pool programs, commercial shuttle services, citizens, government entities, workforce training centers, larger employment centers, and senior centers.

**Task 3: Demand Estimation, Data Collection and Analysis:** The consultant will work with the applicable agencies and communities to collect and then analyze the pertinent foundational data for this study effort. All existing information already compiled will be utilized (See Task 4). This data should include, but is not limited to: transit demand estimation, traffic volumes and growth in traffic, peak hour traffic volume, existing transit service and employment van ridership, and census data on commuter patterns. Financial information will also be collected to determine agency budget size and ability to contribute funding to local and regional transit service. The pertinent data collection and an inventory of transportation providers and their respective budgets will be identified by the consultant in a Technical Memorandum.

**Task 4: Assessment of Regional Transit Needs:** The consultant will utilize efforts of the *2035 Regional Transportation Plan*, the *Colorado Statewide Intercity and Regional Bus Network Plan*, municipal transportation planning efforts, county land use and transportation planning efforts, input from the Working Group, input from the data collection effort, and input of existing providers, to identify transit needs. The consultant will then analyze the functional need for service, express those needs in terms of service area, type of service, routes, budget, and operating needs, and determine the total costs of providing a service to meet identified needs. Finally, the consultant will identify specific local and regional transit needs, the unmet needs of transit dependent populations, and develop workable solutions to address gaps in local and regional transit service. Transit connections to the Denver-metro area will be informed through discussions with the Regional Transportation District (RTD). The consultant will compile findings and analyses of transit need into a Technical Memorandum.

**Task 5: Facility Needs:** Based on the transit demand estimation, the consultant will generally identify transit transfer center and bus maintenance needs and propose optimum locations for such facilities if needed.

**Task 6: Local and Regional Transit Operating Plan:** Upon identifying local and regional transit needs in the area, the consultant will develop a phased operating plan of local and regional transit service. At a minimum, the operating plan will identify a service to address local and regional transit need, operating and capital costs, the routes, schedules, budget, and finance options and an equitable distribution of funding amongst agencies/governments. The Operating Plan will also identify regulatory requirements and authority to provide the identified transit service.

**Task 7: Governance and Finance Structure:** The consultant and the Working Group will coordinate in gathering government and provider input as to preferred and possible governance and finance structures including how the Carbon Valley will interface with RTD. The consultant will further develop a financing plan that considers Federal Transit Administration (FTA) and local funds available, private contributions, and coordination with existing providers. The consultant will develop a menu of possible governance and financial structure options. The Working Group and other planning partners will review these options, whereupon a recommendation will be made as to preferred governance and financing structure that is suitable to meeting the service and funding needs of local and regional transit service in the area. The consultant will identify a final governance and finance structure for local and regional transit service that clearly delineates the roles and responsibilities of city and county governments, transit providers, and other agencies.

**Task 8: Implementation Plan:** The consultant will identify the steps necessary to implement the recommended local and regional transit service. Whether the implementation plan is locally grown system, whether it utilizes an outside contractor, or whether the course more simply comprises a set of recommended changes to the current programs/services, the consultant will identify costs and staffing associated with implementing a local and regional transit service, a governance and finance structure that is supported by the funding partners, and funding sources (local, state, and federal). The consultant will clearly delineate the necessary steps for implementing local and regional transit service in an Implementation Plan.

**Task 9: Final Report and Recommendations:** The consultant will deliver a final report that identifies the need for local and regional transit service between the stated communities, an operating plan, a governance and finance structure, and an overall implementation plan for initiating service. Both electronic and hard copies of this Final Report will be delivered to the three partner cities and the Working Group, the CDOT Transit and Rail Division, and the Colorado Association of Transit Agencies (CASTA). The Grantee may also be asked to present findings from this study at the next annual CASTA/CDOT Fall Conference.

#### **Deliverables:**

The expected outcomes of the study will be to provide transit demand estimates for the three partner cities, an operating plan that includes proposed schedules, capital equipment needs and preliminary operating and capital cost estimates over a five year period. The consultant will also deliver an implementation plan that identifies implementation steps to initiate local general public transit, human services transit, and regional transit service.

The expected outcome of this project is a feasibility study that determines the need for local and regional transit service in the three city area and connecting to the larger region. The results will be used by the study partners to facilitate a local and regional public transportation plan. The eventual goal will be to implement a local and regional public transportation service. The consultant will deliver the following products:

1. The consultant will compile findings, analyses, and recommendations from the public outreach and transit demand/data collection tasks into a Tech Memo.
2. The consultant will deliver a Technical Memorandum that details the assessment of regional transit needs and a recommendation of how to meet those needs.
3. The consultant will deliver an Operating Plan that details the elements identified in Task 5.
4. The consultant will deliver an Implementation Plan that serves as a guidebook for implementing regional transit service between the identified communities and into the Denver-metro area.
5. The consultant will deliver a Final Report that combines the above tasks and Technical Memorandums into one report.

The Town of Firestone will be responsible for distributing the results of the feasibility study to each of the partner agencies, the Working Group, RTD, DRCOG, Weld County, and the North Front Range MPO. This will be done through submission of a report to staff and the appropriate elected bodies.



**Project Schedule:**

The study will take roughly 6 months from the time of initiation. It is anticipated this study will begin in May, 2010 and be finished by December, 2010.

**Project Budget:**

<b>Federal (5304):</b>	<b>\$25,000</b>
<u>Local Match:</u>	<u>\$6,250</u>
<b>Total Project Cost:</b>	<b>\$31,250</b>

The estimated cost of this project is \$31,250. CDOT's financial contribution to this study is limited to \$25,000 in 2009 Section 5304 funds. Any additional costs incurred for this study will be the responsibility of the Town of Firestone.

The requisite 20% cash match for this project (\$6,250) will be provided by the three cities. In-kind services will be in addition to the \$7,500.00 cash contribution and will consist of administration of the consultant contracts plus providing demographic and related information for the study. All of the 5304 funds of \$25,000 and the local cash match of \$6,250 totaling \$31,250 will be used to pay consultant expenses.

**The contact person for this project is:**

Primary contact person for this study is:	Other Contacts	
Wesley LaVanchy, Town Manager Town of Firestone P.O. Box 100 Firestone, CO 80520 Ph: 303-833-3291, ext. 268 Email: <a href="mailto:wlavanchy@ci.firestone.co.us">wlavanchy@ci.firestone.co.us</a>	Pete Ditmon, Town of Firestone Ph: 303-833-3291, ext. 264 FAX: 303-833-4863. Email: <a href="mailto:PDitmon@ci.firestone.co.us">PDitmon@ci.firestone.co.us</a> P.O. Box 100 Firestone, CO 80520-0100	Town Engineer: David B. Lindsay, P.E. President Colorado Civil Group, Inc. 1413 W. 29 <sup>th</sup> Street Loveland, CO 80538 Off: 970-278-0029 Cell: 970-290-1092 Email: <a href="mailto:dlindsay@ccginc.us">dlindsay@ccginc.us</a>

## EXHIBIT B-OPTION LETTER

### SAMPLE OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below

AND cannot be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
-------	--------------------	-------------------	----------------

Vendor name: \_\_\_\_\_

**A. SUBJECT:** (Choose applicable options listed below AND in section B and delete the rest)

1. Option to renew (for an additional term) applies to Highway and Signal maintenance contracts ONLY; this renewal cannot be used to make any change to the original scope of work;
2. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
3. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
4. Option to update funding (a new Exhibit A must be attached with the option letter and shall be labeled A-1 (future changes for this option shall be labeled as follows: A-2, A-3, A-4, etc.)

**B. REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:

**(Insert the following language for use with Options #1):**

In accordance with Paragraph(s) \_\_\_\_\_ of contract routing number (insert FY, Agency code, & CLIN routing #), between the State of Colorado, Department of Transportation, and (insert contractor's name) the state hereby exercises the option for an additional term of (insert performance period here) at a cost/price specified in Paragraph/Section/Provision \_\_\_\_\_ of the original contract, AND/OR an increase in the amount of goods/services at the same rate(s) as specified in Paragraph \_\_\_\_\_ of the original contract.

**(Insert the following language for use with Option #2):**

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The contract is now increased by (indicate additional dollars here) specified in Paragraph/Section/Provision \_\_\_\_\_ of the original contract.

**(Insert the following language for use with Option #3):**

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises the option to add an overlapping phase in (indicate Fiscal Year here) that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous). Total funds for this contract remain the same (indicate total dollars here) as referenced in Paragraph/Section/Provision/Exhibit \_\_\_\_\_ of the original contract.

**(Insert the following language for use with Option #4):**

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises

the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The contract is now (select one: increased and/or decreased) by (insert dollars here) specified in Paragraph/-Section/-Provision/Exhibit \_\_\_\_\_ of the original contract. A new Exhibit A-1 is made part of the original contract and replaces Exhibit A. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit A shall be labeled as follows: A-2, A-3, A-4, etc.)

**(The following language must be included on all options):**

The amount of the current Fiscal Year contract value is (increased/decreased) by (\$ amount of change) to a new contract value of (\$ \_\_\_\_\_) to satisfy services/goods ordered under the contract for the current fiscal year (indicate Fiscal Year). The first sentence in Paragraph/Section/Provision \_\_\_\_\_ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ \_\_\_\_\_).

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

**APPROVALS:**

<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>Bill Ritter, Jr. GOVERNOR</b> Colorado Department of Transportation</p> <hr/> <p style="text-align: center;">By: For the Executive Director</p> <p style="text-align: center;">Date: _____</p>
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**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**State Controller**  
**David J. McDermott, CPA**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

Effective: April 1, 2008